

Summary Judgment Review

Case Name: *Michael Dobbs v. Martin Marietta Materials, Inc.*

Nature of the Order: Magistrate Judge's Final Report & Recommendation

Magistrate Judge: Linda T. Walker

District Judge: Mark H. Cohen

Claims & Outcomes:

1. **Claim:** Age Discrimination Under the ADEA
 - a. **Outcome:** Defendant's Motion Should Be GRANTED
2. **Claim:** Retaliation Under the ADEA
 - a. **Outcome:** Defendant's Motion Should Be GRANTED

Whether R&R Followed: ?

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

Plaintiff Michael Dobbs ("Dobbs") is sixty-six years old. During the relevant period, Dobbs served as either Plant Manager or Area Manager of Defendant Martin Marietta Materials, Inc.'s ("Martin Marietta") Forsyth Quarry in North Georgia. In June 2017, Martin Marietta announced its intent to acquire another company. To avoid coming in conflict with antitrust laws, Martin Marietta proposed divestiture of its Forsyth Quarry.

On February 12, 2018, Dobbs was informed that Martin Marietta would be divesting its quarry and that the employees would be changing employers. In other words, Dobbs would no longer be employed by Martin Marietta. Dobbs was also

told by Joe Reilly, Region President, that Dobbs would receive \$100,000 as a retention bonus to stay on for two years, and that he would be “made whole” in the change of employers. Reilly also told Dobbs that if he tried to apply for employment at Martin Marietta, he would not be rehired.

Dobbs testified that by February 12, 2018, he believed that Martin Marietta was demoting him and terminating him based on his age. He also testified that he reached out to a law firm within a couple weeks because he was interested in filing a wrongful termination claim against Martin Marietta. On April 10, 2018, Reilly again notified Dobbs that his employment was ending and that he was not eligible for rehire. Dobbs testified that he believed he was being terminated based on his age at this time as well. On October 22, 2018, Dobbs filed a charge of discrimination against Martin Marietta with the Equal Employment Opportunity Commission (“EEOC”), alleging discrimination and relation based on age.

Martin Marietta filed two Motions for Summary Judgment. Judge Walker granted the first, and therefore denied the second as moot. In its first Motion, Martin Marietta argued that Dobbs failed to file an EEOC charge within 180 days of receiving notice of the adverse employment action. Under the ADEA, an individual must exhaust available administrative remedies by filing an EEOC charge within 180 days of the last discriminatory act. The Supreme Court has held

that filing a timely charge is a requirement that is subject to waiver, estoppel, and equitable tolling.

The Eleventh Circuit has held that the 180-day period begins “from the day the employee knows or reasonably should know that he or she has been discriminated against.” Martin Marietta argued that Dobbs knew or should have known that he was being subjected to age discrimination by February 12, 2018, and no later than April 10, 2018. Accordingly, the 180-day period expired on October 8, 2018, prior to Dobbs filing his first EEOC Charge. Dobbs argued that Martin Marietta gave him “notice of termination” on April 10, 2018, but that he did not have notice of tangible adverse action because he was told that he would be made whole by immediately having another job at the same salary and receiving his entire pension and stock. In other words, he did not have facts to support his claim until he found out that Martin Marietta had lied to him about the reason for his termination. Dobbs claims that he did not have sufficient facts to act on his suspicion of age discrimination until he received inadequate payment for his pension loss of May 15, 2018. Additionally, Dobbs argues that he was unaware that Martin Marietta lied to him about the reason for his termination until January 7, 2019.

Judge Walker found that, based on Dobbs’ testimony, he had sufficient facts to support his contention that he was subjected to age discrimination as early as

February 12, 2018, and no later than April 10, 2018. Accordingly, Judge Walker recommended that Martin Marietta's Motion for Summary Judgment be granted.

Judge Walker also noted that Dobbs' retaliation claim failed for another reason – it was temporally impossible. Dobbs alleged that the first time he engaged in protected activity was August 23, 2018. However, Dobbs was notified of the adverse actions – that he would be termination from Martin Marietta and not rehired – on February 12, 2018, and April 10, 2018. Accordingly, Judge Walker found that it was not possible for the protected conduct to be causally connected to the protected activity because the retaliatory conduct must come after the protected activity.